



OECA Echo

Enforcement and Compliance Assurance for a Cleaner Environment

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New OECA Policy Enhances Small Business Compliance

From the Assistant Administrator
Steven A. Herman

In the year since our reorganization as the Office of Enforcement and Compliance Assurance, we have developed a series of new strategies to enhance compliance by the regulated community to complement our traditional enforcement tools. Our authorities now run the gamut from compliance promotion through civil and criminal enforcement. This balance allows us to tailor effective, common sense solutions which result in more compliance and a cleaner environment.

On June 14, 1995, Administrator Browner took the opportunity of her appearance at the

White House Conference on Small Business to announce to the more than 500 attendees the issuance of a new OECA policy which provides small businesses with significant new incentives to comply with environmental laws.

The Interim Policy on Compliance Incentives for Small Businesses, one of 25 reinvention of environmental regulation initiatives announced by President Clinton last March, sets guidelines for the Agency to reduce or waive penalties for small businesses that make good faith efforts to correct violations under most EPA statutes. The policy is a major part of the implementation of the President's Executive Memorandum on the Waiver of Penalties and Reduction of Reports, which gives federal agencies the discretion to waive penalties for violations by small busi-

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Compliance Assistance Initiatives Emphasize Training, Grants, Workshops

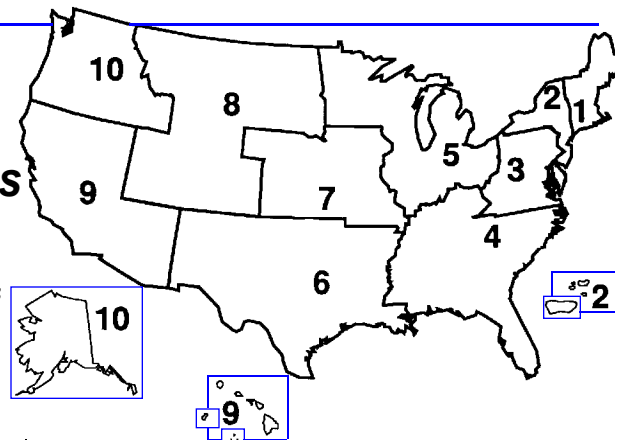
(This is the first in a series of articles describing compliance initiatives in EPA's ten regional offices. This issue highlights Regions 1, 2, 3, and 9.)

New England Region Establishes Office of Environmental Stewardship

A new Office of Environmental Stewardship provides enforcement and technical assistance to the regulated community through a 13-person legal and technical staff called the New England Environmental Assistance Team (NEEATeam). The team works with businesses to promote and recognize environmentally efficient practices.

The NEEATeam program:

- Provides compliance assistance through workshops, training programs, written



materials and roundtable discussions on new and existing environmental regulations and pollution prevention to metal finishers, printers, electronics/computer workers, and municipalities. A toll-free telephone number accesses compliance information for business, industry, and municipal officials.

- Provides grants of more than \$750,000 to states and others for pollution prevention

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New Small Business Compliance Policy

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nesses under certain conditions.

The new interim policy builds upon and expands the scope of the Clean Air Act Small Business Technical Assistance Response Policy, which OECA issued in August 1994. That policy, which was developed at the request of, and with the input of, more than 30 states, waived penalties for small businesses that corrected stationary source violations through participation in state small business assistance programs. The interim policy covers most EPA statutes, including the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Clean Water Act, the Toxic Substances Control Act, the Emergency Planning and Community Right to Know Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Underground Storage Tank program.

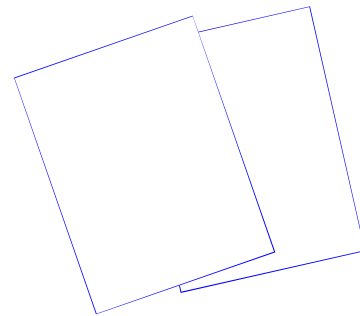
The policy has been carefully crafted to provide positive incentives for small businesses to correct violations, while ensuring effective action against willful or serious misconduct. It applies to companies employing 100 or fewer persons. The company must demonstrate good faith by identifying the violation through participation in small business technical assistance programs. The violation itself must be a first time, non-criminal violation which involves no significant threat to public health or safety or the environment. If the violation is corrected by the company within 180 days -- or 360 days using pollution prevention -- EPA will eliminate the entire penalty. If the business meets all the criteria but needs a longer correction period, EPA will waive up to 100 percent of the punitive ("gravity") portion of the penalty, but may seek the economic benefit of noncompliance. i.e., the money saved by the violator during the time it remained out of compliance.

The policy also promotes flexibility and innovation by states, enabling them to use different combinations of their delegated enforcement authority and compliance assistance efforts to enhance compliance among small

business. EPA will defer to state enforcement actions that are consistent with the policy.

The issuance of the Small Business Compliance Incentive Policy is a good example of this Administration's commitment to firm, fair and flexible enforcement of the nation's environmental laws. As Administrator Browner said to the Conference participants, "We aren't interested in giving irresponsible polluters a break. We do want to help honest business owners comply with the law and run their business as cleanly and efficiently as possible."

I am confident that this policy will play a big part in helping realize that goal.■



OECA Issues FY 1994 Enforcement and Compliance Assurance Accomplishments Report

OECA's FY 1994 Enforcement and Compliance Assurance Accomplishments Report is back from the printer and available to the public. The report highlights the major enforcement and compliance assurance actions taken by headquarters and the regions during the past fiscal year. It describes the office reorganization, summarizes national, regional, and state initiatives, as well as major civil and criminal litigation, reviews OECA policies and compliance assurance activities, and publishes the aggregate statistics on enforcement actions and penalties. The report is available from EPA's Public Information Center, (202) 260-2080.

Contact: Joe Acton, (202)-564-5002.■

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EPA Launches Environmental Leadership Program

Ten companies and utilities and two federal facilities are participating in EPA's Environmental Leadership Program (ELP). The names of the companies were announced April 7 by Administrator Browner (see box). The ELP, which is part of the Clinton Administration's reinvention of regulation, is a new voluntary program in which EPA and industry will work together to identify how to protect the public and the environment in the most efficient way.

The ELP will demonstrate how innovative management techniques such as self-auditing, pollution prevention, and technical assistance can reduce the burdens of inspections and paperwork while improving environmental quality and enhancing compliance with existing law. It makes sense for government to demonstrate how forward-thinking businesses can thrive and prosper while fully complying with the law.

The facilities participating in the pilot program were selected from a submission of 40 facility proposals from all sectors of American industry, including manufacturing, chemicals, waste management, computer technology, energy, and printing.

By examining the basic components of what should be state-of-the-art compliance management programs in the different industry sectors, the ELP will demonstrate that environmental compliance can, and should, be an integral part of industrial leadership.

The participating companies and federal facilities range in size from large public corporations to smaller privately held businesses. All were carefully screened and have good current compliance records at both the federal and state level. The states' environmental conservation departments were active participants in the ELP selection process.

During the next 12 months, each facility will conduct specific projects which demonstrate the different elements of environmental leadership. They include the

use of compliance auditing programs and multimedia inspection protocols; pollution prevention opportunity assessments; ways to measure compliance as well as how to measure pollution prevention and "beyond compliance" efforts, and assessing how environmental auditing can be better "sized" to meet the compliance needs of smaller businesses, and how auditing can be promoted through trade associations and state agencies.

The ELP's pilot phase will last approximately one year. During this time, neither EPA nor the states will conduct routine inspections at the facilities, apart from

those conducted under the Environmental Leadership Program. The facilities have agreed to disclose to EPA and the states any actual or suspected violations that arise. EPA and the states will offer a limited period to correct certain violations. The facilities have agreed to promptly correct any violations that are detected.

A key component for this pilot phase is community and employee involvement. We want all the stakeholders to have the opportunity to help shape the definitions and requirements of what it takes to become an environmental leader. EPA, the states, and the facilities will be engaging the environmental justice communities, environmental groups, and the public in an ongoing dialogue about the components of the pilot program and obtain their input on shaping the requirements for a full-scale ELP.

The lessons learned by EPA and the facilities through the pilots will be used to help the agency design a full-scale leadership program which will be open to all facilities willing and able to meet the criteria for participation. The information will be put to good use by EPA and the states as we jointly assess and implement new approaches to promote innovation and enhance long-term compliance across the country.

Contact: Tai-Ming Chang, (202) 564-5081.■

ELP Participants

Gillette Company

Boston, MA; Chicago, IL; and Santa Monica, CA facilities

Motorola

Austin, TX

Salt River Project

Phoenix, AZ

Ocean State Power

Burrillville, RI

WMX Technology

Arlington, OR

John Roberts Co.

Minneapolis, MN

Duke Power

Mount Holly, NC

Ciba Geigy

St Gabriel, LA

McClellan AFB

Sacramento, CA

Puget Sound Naval Shipyard

Bremerton, WA.

Simpson Tacoma Kraft Company

Tacoma, WA

AZ Public Service

Phoenix, AZ

Supplemental Environmental Projects Policy Revised

OECA's Supplemental Environmental Projects (SEPs) policy expands to seven the number of categories of allowable SEP projects: Public Health, Pollution Prevention, Pollution Reduction, Environmental Restoration and Protection, Assessments and Audits, Environmental Compliance Promotion, and Emergency Planning and Preparedness.

The policy better defines the relationship between the violation and the proposed project, i.e., the SEP must remedy or reduce the probable overall environmental or public health impacts or risks to which the violation contributes, or reduces the likelihood that similar violations will occur in the future. The SEP's primary impact must occur where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographical area. SEPs may be allowable even if the project addresses a different pollutant in a different medium from the violation.

The new policy contains set procedures for arriving at an appropriate penalty. The percentage of the SEP cost that may be applied as mitigation against the preliminary penalty is determined by examining whether and how effectively the project achieves: public or environmental benefits, innovativeness, environmental justice, multimedia impacts, and pollution prevention. The better the SEP performs on these factors, the more the cost of the SEP can be applied as mitigation, up to a maximum of 80 percent. In addition, if the defendant is a small business, a government agency, or a non-profit organization, or if the SEP implements a pollution prevention activity, up to 100 percent of the SEP cost may be applied as mitigation. Regardless of the SEP cost or the calculated mitigation percentage, the final penalty must be equal to or greater than the "minimum penalty" calculated above.

The revised policy was issued May 4 on an interim basis to allow for public comment which expires on August 6. The policy may be revisited later this fiscal year based on in-use experience. Contact: David Hindin, 564-6004.■

Cases Closed

Innovative Settlement to Spur Cleanup of Minnesota Superfund Site

In a creative settlement combining mixed funding and *de minimis* and small party settlements, the federal government, the state of Minnesota, and fifteen private parties will contribute \$20 million to the cost of removing carcinogens and oily residue from the "Arrowhead" Superfund site in northern Minnesota near Duluth. Under the terms of the March 9, 1995 consent decree, more than 100 gas station owners and other parties that contributed smaller amounts of waste oil will pay far less money and be freed from further litigation.

Arrowhead operated a waste oil "re-refining" operation at the site from 1961-1980. Tons of thick sludge, containing lead, volatile organic compounds (VOCs), and other by-products, contaminated surface and groundwater. As a result, water supplies from nearby residents had to be rerouted. In addition to threatening drinking water, local wildlife and fauna were killed by exposure to the pollution.

In 1989, the U.S. and Minnesota sued fifteen major waste contributors, who in turn, sued hundreds of other companies and individuals who had sent smaller quantities of waste oil to the site. Some are individuals who operated gas stations during the 1990s, and who are now senior citizens with limited financial means.

Small Parties Freed from Costly Litigation

The federal and state governments negotiated a consent decree which treated many of the small parties as *de minimis* settlers, permitting them to fully resolve the claims against them by paying a designated share, freeing them from costly litigation. Individuals with very limited means were permitted to settle based on their ability to pay.

Under the terms of the settlement, the

(Continued on page 5)

(Innovative Superfund Cleanup. Continued from page 4)

fifteen major defendants will excavate and remove all sludge material from the site and treat it using a new technology that will render it essentially harmless, at a cost of \$12.5 million. If the technology fails, the defendants will be required to incinerate the sludge. The settlers have already spent over \$6 million in other response activities at the site. EPA will spend about \$6.3 million to cleanup other surface soils contaminated by oily residues, and Minnesota will spend about \$1 million to continue groundwater treatment already begun by private parties. Collectively, the private parties will pay about 60 percent of the total cleanup costs, and the two governments about 40 percent.

The use of mixed funding and *de minimis* settlements is an example of how the government can use a variety of tools and authorities to fashion a settlement which protects the public and is fair to the participants.

Two Plead Guilty to Illegal Dumping in Poor D.C. Neighborhood

On June 12, 1995, Mary Ellen Bauman, the owner of East Chem Corporation of Hyattsville, Maryland, and Patrick Hill, a former East Chem employee, each pled guilty before U.S. District Court Judge Charles Richy to one count of unlawful disposal of hazardous wastes for illegally dumping toxic chemicals in a District of Columbia neighborhood. The illegal disposal had resulted in the evacuation of three nearby apartment buildings in a public housing development.

By entering the plea, Bauman and Hill acknowledged that, on June 1, 1994, Hill disposed of 25 buckets of hazardous waste from the East Chem warehouse into a dumpster located at 3104 Bruce Place S.E., in order to avoid the cost of sending the wastes to an approved hazardous waste landfill. Building maintenance workers found the chemicals and called the D.C. Fire Department, who

brought in a waste disposal company to remove over 200 gallons of hazardous waste, including cyclohexanone, dibutylphthalate, tetrachloroethene, naphthalene, toluene, methylene chloride, xylene, and acetone, from the dumpster.

"All Americans Deserve to Be Protected from Pollution"

Because of the quick response of authorities and the evacuation of the residents, no one was hurt. The results, however could have been far more serious. The toxic chemicals left in the dumpster can cause extensive skin and eye irritation, convulsions, coma, kidney failure, blindness, and -- over prolonged exposure -- possible damage to the central nervous system. Also, if a product such as ordinary dish soap had been mixed with some of the chemicals, an explosion or the formation of dangerous fumes could have occurred.

As soon as the hazardous waste was discovered, the FBI and EPA began investigating the case. The chemicals were eventually traced to East Chem through labels on the buckets contained the chemicals. Upon being interviewed by the agents, the defendants admitted their actions.

Bauman and Hill will be sentenced on August 28, 1995. Both face maximum sentences of five years in prison and a \$250,000 fine.

The defendants also are liable for the costs incurred by the District of Columbia in disposing of the chemicals and providing temporary shelter for the residents of the housing complex.

At the press conference at the U.S. Attorneys office following the pleas, Steve Herman, EPA's Assistant Administrator for Enforcement and Compliance Assurance stated that the government's successful prosecution of the case "should send a loud and clear message to all potential violators: The government will not tolerate low income communities being used as illegal waste dumps. This Administration believes that all Americans deserve to be protected from pollution, not just those who can afford to live in the cleanest, safest, communities." ■

Upcoming Events

Water Environment Federation Conference
Oct 22-27
Miami, FL
Contact: Gary Polvi (202) 564-7056

Principles of Environmental Compliance and Enforcement (training course for prospective facilitators)
September 1995
Washington, DC
Contact: Beverly Updike (202) 260-8316

Art Ray, formerly of OECA, has been named Deputy Secretary for the Environment, for the State of Maryland Department of the Environment. Congratulations, Art!

Regional Compliance Assistance Initiatives

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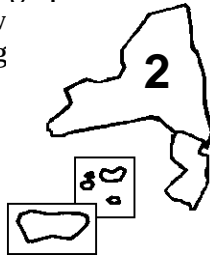
- assistance to businesses and communities.
- Works with businesses and state technical assistance offices to develop p2 and compliance program management plans aimed at protecting prior investments while meeting environmental law requirements.
 - Provides checklists on environmental compliance and p2 programs to help facility managers plan more efficiently.
 - Conducts demonstrations in laboratories and at model facilities on p2 and compliance techniques.

Contacts: Abby Swaine (617)565-4523 and Mark Mahoney (617) 565-1155.

New Region 2 Branch Focuses On Areas of Greatest Need

Region 2's compliance assistance activities are conducted by a new Compliance Assistance and Program Support Branch which focuses on geographic areas and industry sectors w the greatest needs, including communities and small businesses. Compliance assistance technical teams will provide multi-media and p2 expertise to various types of industry.

Contact: Pat Harvey (212) 637-3886.



Region 3 Sets Up Project To Help Small Businesses

A project concentrating on auto repair, printing, dry cleaning, and metal finishing/electroplating businesses has been initiated by Region 3's Enforcement Coordination Office. Information provided ranges from health and environmental impacts to new regulations affecting these businesses.

Workgroups made up of representatives from EPA, state and local governments, environmental groups, and trade associations have been formed to determine what compliance assistance activities will be undertaken.



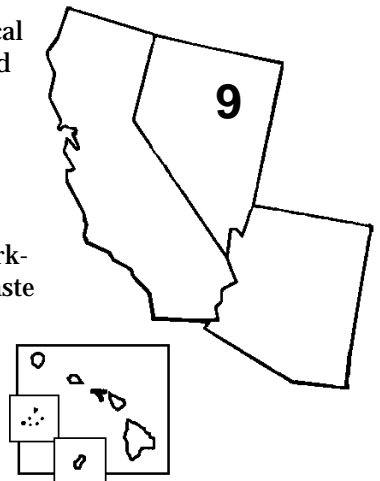
Preliminary ideas include using sector-based self-audit evaluation checklists.

Contact: Janet Viniski (215) 597-9370.

Workshops Are Core Of Region 9 Outreach

A RCRA compliance assistance program is focussing on non-site specific outreach activities that provide technical information and regulatory interpretation primarily through work-shops.

- One-day work-shops for waste generators covering basic RCRA and California Title 22 hazardous waste handling requirements.
- A two-day advanced training workshop on Phase II LDR requirements is being held in conjunction with an Industrial Environmental Association trade show.
- A Navy-sponsored workshop is being facilitated for DOD handlers in Hawaii.
- Two-and-a-half-day multi-media work-shops under the Toxics Release Inventory Program are being conducted by the RCRA compliance assistance program.



In addition to the workshops, an information center operates a RCRA-specific library that includes technical and regulatory guidance documents for hazardous waste and underground storage tanks. The center is staffed by two full-time SEE employees who also handle the region's RCRA Information Line.

Contact: Greg Czajkowski (415) 744-2107.■

New Ways Suggested to Measure Environmental Benefits

OECA's Measures of Success Workgroup's final report, issued in January 1995, contains three proposals to more effectively measure results of EPA's redesigned compliance and enforcement program:

- To systematically capture environmental results and programmatic impacts of judicial and administrative actions, the workgroup has recommended implementation of a case conclusion form that will gather quantitative and qualitative results of final enforcement actions. Requested information covers type of action, penalty, cost recovery, environmental or other impact or injunctive relief, SEPs by type, cost, and impact, and environmental justice factors. The form is being piloted in every region for all judicial actions and administrative penalty actions concluded during fiscal 1995. Information on the two-page form will be maintained in a data base set aside specifically for the pilot. In the longer term, the information will be incorporated into the OECA docket system.
- Information on significant noncompliers and rates of compliance will provide a cross-program view of particular economic sectors,

communities, pollutants, and corporations. OECA will utilize the Integrated Data for Enforcement Activity (IDEA) retrieval system to produce this data.

- Four enforcement indexes will be established to provide a more informative enforcement profile emphasizing case conclusions. The indexes cover civil judicial cases, criminal cases, significant administrative actions, and significant activities that address noncompliance at federal facilities. The proposals should provide staff and managers added incentive to resolve cases.

Contact: Rick Duffy, 202-564-5014.■

EPCRA Enforcement Initiative Underway

A nationwide EPA enforcement initiative is underway against companies that emitted or released toxic chemicals into the environment but failed to make this information available to EPA and the public as required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

EPA assessed \$2.6 million in penalties against 47 companies for failure to supply information on the release, transfer and management of 36 toxic chemicals, thereby failing to make local communities aware of their potential exposure to the toxic chemicals. The initiative, announced on June 16, was timed to occur prior to the annual July 1st deadline for the Toxic Release Inventory (TRI) reporting provisions under EPCRA, in an effort to further promote industry compliance with the reporting deadline for submitting 1994 TRI data.

Under EPCRA section 313, certain companies are required to report to EPA on July 1 of each year their releases, transfers, and waste management practices for more than 300 listed toxic chemicals. Facilities that fail to submit the toxic chemical release or management information are subject to civil administrative penalties of up to \$25,000 per day. The 47 civil administrative complaints in this initiative seek fines from companies that failed to supply the required data for one or more years during 1989 through 1993. All violations cited in the complaints were identified through EPA inspections. The complaints were issued by the EPA's ten regional offices, which participated in this national initiative. The effort was coordinated by the Toxics and Pesticides Enforcement Division (TPED) in the Office of Regulatory Enforcement (ORE).

Contact: Barbara Reilly, (202)564-4176.■



Upcoming Courses

National Enforcement Training Institute courses are open to all federal, state, and local environmental personnel. Please call the contact listed for more information.

Expert Witness Seminar
August 29-30, 1995
NETI-West (near Denver, CO)
Contact: Don Gipe
303-969-5815

Protecting Water Quality Through Enforcement and Compliance (Clean Water Act and Safe Drinking Water Act): Pilot Course
September 19-21, 1995
Washington, DC area
Contact: Zena Aldridge
202-260-6664

State Perspective

Gun Fire, Truck Wrecks, Contaminated Beaches Are All Part of HAZ MAT's Job in Arizona

Hazardous material technicians for the Arizona Department of Environmental Quality (ADEQ) occasionally encounter unanticipated hazards themselves in going about their work of protecting the environment.

Gun fire, for example.

ADEQ hazardous material workers typically go on drug busts where toxic materials are suspected of being used to make illegal drugs, such as methamphetamines, which involve explosive and reactive chemicals. When illegally dumped, these chemicals potentially can contaminate ground water. That's why ADEQ's Mike Malone was on the scene of a recent drug bust in southeastern Arizona being carried out by state law enforcement officers. Suddenly, shots rang out. For more than an hour, the drug suspect sprayed gun fire at law enforcement officers. He then set his house on fire and threw his two children out the door, telling them to run. The suspect was arrested, and no one was injured.

ADEQ Haz Mat technicians more typically deal with spills of hazardous materials

resulting from truck wrecks. The technicians are on call 24 hours a day and deal with about 200 such occurrences a year.

The department's four-man hazardous material unit headed by Dan Marsin also has been called on to combat a fire at a landfill near Phoenix containing thousands of discarded tires. In this case, ADEQ hired off-duty fire fighters and used the community's fire department to help. It took two weeks to put the fire out.

In another instance, employees of a Lake Havasu concessionaire were told to get rid of some contaminated fuel. They did so by dumping the toxic waste into a hole they dug at a beach. When ADEQ was called, it found that not only was the beach contaminated, but that the waste had seeped into the lake. Some 70,000 cubic yards of beach were removed and replaced with clean sand, and 200,000 gallons of lake water were treated to remove contaminants.

Environmental protection involves some strange goings on, as ADEQ can attest. ■



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